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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Paul T. Van Gompel

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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

CRAIG, PAULA L

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/624,660	Applicant(s) VAN GOMPEL ET AL.	
	Examiner PAULA L. CRAIG	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 6 and 33 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7-15 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/12/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed November 12, 2008 have been considered but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2, 7-13, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0122397 to Morman et al.
4. The applied reference has a common assignee and inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Art Unit: 3761

5. For Claim 1, Morman '397 teaches a method of manufacturing a disposable undergarment including moving a web of body panel material in a longitudinal machine direction, the web of body panel material having first and second spaced apart outer edges (Figs. 1-6, paragraphs 1, 6-7, 17, 44, 62-63, Claim 9). Morman teaches forming a cutout in the web and thereby removing a portion of the body panel material from the web (waste material is produced when the cut edge of the rear body panel has a lesser amplitude than that of the cut edge of the front body panel; cutout is the section of the waste material cut from the area to be covered by crotch member 50; Figs. 3-5, paragraphs 62, 64, 66, 70, 73). Morman teaches cutting the web of body panel material along the longitudinal machine direction and thereby forming a rear body panel web and a front body panel web, wherein cutting the web of body panel material includes forming first and second cut edges on the front and rear body panel webs (Figs. 3-5, paragraphs 62, 64-68, 70, 73, Claims 12, 16). The removed portion of the body panel material does not form any part of the front and rear body panel webs (paragraph 64). The cutout extends from at least one of the first and second cut edges toward a respective one of the first and second outer edges (Figs. 3-5, paragraphs 62, 64-68, 70, 73, Claims 12, 16). Morman teaches connecting a crotch member to each of the rear and front body panel webs with the crotch member covering an entirety of the cutout (crotch member 50 covers the area where waste material was removed; Figs. 3-5, paragraphs 62, 64-68, 70, 73). Morman teaches the crotch member 50 including an elastic material (paragraphs 44-45, 51; note that the backsheet may be elastic).

Art Unit: 3761

6. For Claim 2, Morman '397 teaches cutting the web such that the cutout is formed entirely in one of the front and rear body panel webs (paragraph 64; note that the waste material can be considered as formed entirely in either of the body panels before cutting).

7. For Claim 7, Morman '397 teaches the first and second cut edges being substantially linear (Figs. 3-5, paragraphs 44, 62, 64, 66, 70).

8. For Claim 8, Morman '397 teaches the web having a body side surface and a garment side surface, wherein connecting the crotch member to each of the front and rear body panel webs includes connecting the crotch member to the garment side surface of each of the front and rear body panel webs (paragraphs 58, 67).

9. For Claim 9, Morman '397 teaches the web having a body side surface and a garment side surface, wherein connecting the crotch member to each of the front and rear body panel webs includes connecting the crotch member to the body side surface of each of the front and rear body panel webs (paragraphs 58, 67).

10. For Claim 10, Morman '397 teaches stretching the web in the longitudinal machine direction prior to forming the cutout in the web and forming the cutout in the web while the web is in the stretched condition (Fig. 5, paragraphs 32, 37, 62, 65-66).

11. For Claim 11, Morman '397 teaches forming the cutout and cutting the web of body panel material along the longitudinal machine direction being done simultaneously with a single cutting device (paragraphs 62, 64).

12. For Claim 12, Morman '397 teaches separating the front and rear body panel webs prior to connecting the crotch member thereto (paragraphs 65-68, 70).

Art Unit: 3761

13. For Claim 13, Morman '397 teaches the crotch member including a top sheet, a back sheet and a retention portion disposed between the top sheet and the back sheet (paragraph 44).

14. For Claim 15, Morman '397 teaches the crotch member including at least one fold, wherein connecting the crotch member to the front and rear body panel webs includes connecting the fold to the front and rear body panel webs (paragraphs 40, 56, 73).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 14 and 32 are rejected under 35 U.S.C. 103(a) as being obvious over Morman '397.

Art Unit: 3761

17. The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

18. For Claim 14, Morman '397 teaches a method of manufacturing a disposable undergarment including moving a web of body panel material in a longitudinal machine direction, the web of body panel material having first and second spaced apart outer edges (Figs. 1-6, paragraphs 1, 6-7, 17, 44, 62-63, Claim 9). Morman teaches forming a cutout in the web and thereby removing a portion of the body panel material from the web (waste material is produced when the cut edge of the rear body panel has a lesser amplitude than that of the cut edge of the front body panel; cutout is the section of the waste material cut from the area to be covered by crotch member 50; Figs. 3-5,

Art Unit: 3761

paragraphs 62, 64, 66, 70, 73). Morman teaches cutting the web of body panel material along the longitudinal machine direction and thereby forming a rear body panel web and a front body panel web, wherein cutting the web of body panel material includes forming first and second cut edges on the front and rear body panel webs (Figs. 3-5, paragraphs 62, 64-68, 70, 73, Claims 12, 16). The removed portion of the body panel material does not form any part of the front and rear body panel webs (paragraph 64). The cutout extends from at least one of the first and second cut edges toward a respective one of the first and second outer edges (Figs. 3-5, paragraphs 62, 64-68, 70, 73, Claims 12, 16). Morman teaches connecting a crotch member to each of the rear and front body panel webs with the crotch member covering an entirety of the cutout (crotch member 50 covers the area where waste material was removed; Figs. 3-5, paragraphs 64-68, 70, 73). Morman teaches stretching at least one of the front and rear body panel webs to a stretched condition prior to connecting the crotch member thereto (Fig. 5, paragraphs 32, 37, 65-67). Morman does not expressly teach connecting the crotch member to the front and rear body panel webs when in the stretched condition. Applicant's specification does not disclose that attaching the crotch member when the front or rear body panel web is in a stretched condition serves any stated purpose or solves any particular problem; on the contrary, Applicant's specification teaches that the crotch member can be secured to the body panels when they are in a stretched or unstretched condition (specification, page 16). In light of Morman's teaching of a stretched condition and of connecting the crotch member, it would have been obvious to connect the crotch member to the body panel webs in a stretched condition.

Art Unit: 3761

19. For Claim 32, Morman '397 teaches a method of manufacturing a disposable undergarment including moving a web of body panel material in a longitudinal machine direction, the web of body panel material having first and second spaced apart outer edges (Figs. 1-6, paragraphs 1, 6-7, 17, 44, 62-63, Claim 9). Morman teaches forming a cutout in the web and thereby removing a portion of the body panel material from the web (waste material is produced when the cut edge of the rear body panel has a lesser amplitude than that of the cut edge of the front body panel; cutout is the section of the waste material cut from the area to be covered by crotch member 50; Figs. 3-5, paragraphs 62, 64, 66, 70, 73). Morman teaches cutting the web of body panel material along the longitudinal machine direction and thereby forming a rear body panel web and a front body panel web, wherein cutting the web of body panel material includes forming first and second cut edges on the front and rear body panel webs (Figs. 3-5, paragraphs 62, 64-68, 70, 73, Claims 12, 16). The removed portion of the body panel material does not form any part of the front and rear body panel webs (paragraph 64). The cutout extends from at least one of the first and second cut edges toward a respective one of the first and second outer edges (Figs. 3-5, paragraphs 62, 64-68, 70, 73, Claims 12, 16). Morman teaches connecting a crotch member to each of the rear and front body panel webs with the crotch member covering an entirety of the cutout (crotch member 50 covers the area where waste material was removed; Figs. 3-5, paragraphs 64-68, 70, 73). Morman does not teach cutting the web of body panel material being performed separately from and after forming the cutout in the web. However, it is well known in the art to cut web sections in any suitable order. Applicant's specification does

Art Unit: 3761

not disclose that cutting the web and the cutout separately serves any stated purpose or solves any particular problem; on the contrary, Applicant's specification describes this as equivalent to simultaneous cutting (specification, page 29). It would have been obvious to one of ordinary skill in the art at the time of the invention to cut the web sections in any suitable order.

Double Patenting

20. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

21. Claims 1-2, 7-15, and 32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 13, 17, 21, and 27-29 of U.S. Patent No. 7,220,335 to Van Gompel et al. The claims of Van Gompel '335 teach a method of manufacturing a disposable undergarment including

Art Unit: 3761

moving a web, forming a cutout, and connecting a crotch member; Claims 17 and 21 also teach the edges of the front and rear body panel webs having different shapes, which suggests a removed portion of body panel material. Claim 13 teaches the crotch member including elastic material. The claims of Van Gompel '335 do not expressly teach removed material. In light of Van Gompel's teaching of the edges of the front and rear body panel webs having different shapes, it would have been obvious to one of ordinary skill in the art to modify Van Gompel '335 to include a removed portion of body panel material.

22. Claims 1-2, 7-15, and 32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1 and 5 of U.S. Patent No. 7,419,562 to Van Gompel et al. in view of Tanzer. Claims 1 and 5 of Van Gompel '562 teach a method of manufacturing a disposable undergarment including moving a web, forming a cutout, and connecting a crotch member; Claim 5 also teaches the edges of the front and rear body panel webs having different shapes, which suggests a removed portion of body panel material. The claims of Van Gompel '562 do not expressly teach removed material or the crotch member including an elastic material. In light of Van Gompel's teaching of the edges of the front and rear body panel webs having different shapes, it would have been obvious to one of ordinary skill in the art to modify Van Gompel '562 to include a removed portion of body panel material. Elastic materials in crotch members are well known. Tanzer confirms this and teaches an absorbent article having a topsheet, backsheet, and an absorbent portion, all of which include an elastic material in the crotch area (Abstract, col. 2, line 31 to col.

Art Unit: 3761

5, line 22, col. 5, line 62 to col. 6, line 15, col. 8, lines 43-65col. 9, lines 29-64). Tanzer teaches that stretching is desirable for disposable undergarments, helps prevent gel blocking of superabsorbent, and improves the fit (col. 1, lines 38-67, col. 8, lines 19-35, col. 10, lines 17-36) It would have been obvious to one of ordinary skill in the art to modify Van Gompel '562 to include the topsheet, backsheet, and/or absorbent portion of the crotch member having an elastic material, as taught by Tanzer, to help prevent gel blocking and improve the fit, as taught by Tanzer.

23. Claims 1-2, 7-15, and 32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 12, and 31 of U.S. Patent No. 6,979,380 to Thorson et al. in view of Tanzer. The claims of Thorson '380 teach a method of manufacturing a disposable undergarment including moving a web, forming a cutout, and connecting a crotch member; Claims 12 and 31 also teach the edges of the front and rear body panel webs having different shapes, which suggests a removed portion of body panel material. The claims of Thorson do not expressly teach removed material or the crotch member including an elastic material. In light of Thorson's teaching of the edges of the front and rear body panel webs having different shapes, it would have been obvious to one of ordinary skill in the art to modify Thorson '380 to include a removed portion of body panel material. Elastic materials in crotch members are well known. Tanzer confirms this and teaches an absorbent article having a topsheet, backsheet, and an absorbent portion, all of which include an elastic material in the crotch area (Abstract, col. 2, line 31 to col. 5, line 22, col. 5, line 62 to col. 6, line 15, col. 8, lines 43-65col. 9, lines 29-64). Tanzer teaches that stretching is

Art Unit: 3761

desirable for disposable undergarments, helps prevent gel blocking of superabsorbent, and improves the fit (col. 1, lines 38-67, col. 8, lines 19-35, col. 10, lines 17-36) It would have been obvious to one of ordinary skill in the art to modify Thorson '380 to include the topsheet, backsheet, and/or absorbent portion of the crotch member having an elastic material, as taught by Tanzer, to help prevent gel blocking and improve the fit, as taught by Tanzer.

Allowable Subject Matter

24. Claim 5 is allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAULA L. CRAIG whose telephone number is (571)272-5964. The examiner can normally be reached on M-F 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761

/Paula L Craig/
Paula L Craig
Examiner
Art Unit 3761